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SRP Legal Services

George E. Hays

Attorney at Law

236 West Portal Avenue #110

San Francisco, CA 94127

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August 11, 2018

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Plant Manager
Navajo Generating Station
P.O. Box 850
Page, Arizona 86040
Certified Mail # 7018 0040 0000 7884 8654

Salt River Project
1500 N. Mill Avenue
Tempe, AZ 85281
Certified Mail # 7018 0040 0000 7884 8661

Salt River Project Agricultural Improvement
and Power District
1521 N. Project Dr.
Tempe, AZ 85281
Certified Mail # 7018 0040 0000 7884 8678

Salt River Valley Water Users' Association
1500 N. Mill Avenue
Tempe, AZ 85281
Certified Mail # 7018 0040 0000 7884 8685

Arizona Public Service Company
400 North 5th Street
Phoenix, Arizona 85004
Certified Mail # 7018 0040 0000 7884 8692

Brenda Burman, Commissioner
U.S. Bureau of Reclamation
Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240-0001
Certified Mail #7018 0040 0000 7884 8708

Ryan Zinke, Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
Certified Mail # 7018 0040 0000 7884 8715

Nevada Power Company d/b/a NV Energy
6226 West Sahara Avenue
Las Vegas, Nevada 89146
Certified Mail # 7018 0040 0000 7884 8722

Tucson Electric Power Company
88 E Broadway HQE910
Tucson, Arizona 85701
Certified Mail # 7018 0040 0000 7884 8739

RE: Second Notice of Intent to Sue for Violations of the Clean Air Act

Dear Addressees:

On behalf of Sierra Club and its members, we are writing to provide you with notice that Sierra Club intends to file a civil lawsuit against you for violations, described below, of the federal Clean Air Act, 42 U.S.C. § 7401 et seq., which occurred and continue to occur at the Navajo

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Generating Station ("NGS"). This letter covers a different set of violations than those addressed by my letter of June 7, 2018

The citizen suit provision of the Clean Air Act allows Sierra Club to commence a civil action in a United States District Court for violations of a Clean Air Act emission standard or limitation or for constructing without a permit. 42 U.S.C. § 7604(a)(1) and (a)(3). An emission standard or limitation is defined as any requirement under 42 U.S.C. § 7411 or § 7412, any condition or requirement applicable under a state implementation plan approved by the U.S. EPA, any Title V permit, or any requirement to obtain a permit as a condition of operations. 42 U.S.C. § 7604(f).

To the extent required,¹ this notice is being provided pursuant to 42 U.S.C. § 7604(b) and 40 C.F.R. Part 54. Sierra Club will ask the Court to impose appropriate injunctive relief and civil penalties and require a beneficial environmental project under 42 U.S.C. § 7604(g)(2) in the areas directly impacted by the highest concentrations of air pollution emissions from NGS. Sierra Club will also ask the Court to award Sierra Club its costs of litigation and attorneys' fees.

A. The Specific Provisions, Standards, Limitations, or Orders Which Have Been Violated

You have violated the following emission standards or limitations:

1. 42 U.S.C. § 7475(a), which provides in pertinent part that:

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless—

(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part...

2. 40 C.F.R. § 52.21(a)(2)(iii), which provides in pertinent part that:

No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

¹ See 42 U.S.C. §§ 7604(a)(3) and (b)(1).

3. 40 C.F.R. § 52.21(j)(3), which provides in pertinent part that:

A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source.

4. 40 C.F.R. § 71.1(b), which provides in pertinent part that:

All sources subject to the operating permit requirements of title V and this part shall have a permit to operate that assures compliance by the source with all applicable requirements.

5. 40 C.F.R. § 49.5513(j)(10), which provides in pertinent part that:

Equipment operations. At all times, including periods of startup, shutdown, and malfunction, the owner/operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, or their designee, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

B. The Activities Alleged to Be in Violation

NGS has three coal-fired boilers, known as Units 1, 2, and 3 and corresponding equipment for electricity generation. NGS is an existing major source under 40 C.F.R. §52.21, Prevention of Significant Deterioration (PSD) regulations because the facility is a fossil fuel-fired steam electric plant of more than 250 million Btu/hr heat input (one of the 28 listed industrial source categories) and has the potential to emit more than 100 tpy of several regulated New Source Review (NSR) pollutants.

From on or about January 28, 2005 until March 30, 2005, you undertook a “major overhaul” at Unit 1 at NGS (“2005 Unit 1 Major Overhaul”). During the 2005 Unit 1 Major Overhaul, you made non-routine physical changes and/or changes in the method of operation at NGS Unit 1 including, but not limited to, an economizer replacement which alone was budgeted for \$7,114,000.

As the tables in Appendix 1, derived from data you reported to EPA's Clean Air Markets database, show, the physical changes and/or changes in the method of operation at Unit 1 during the 2005 Unit 1 Major Overhaul caused emissions of SO₂ and NO_x for at least one 12-month period beginning on or after April 1, 2005 that exceeded baseline actual emissions for any consecutive 24-month period within the 5-year period immediately preceding commencement of the 2005 Unit 1 Major Overhaul by amounts greater than the applicable PSD significance levels. For example, for the 12-month period immediately after you completed the project, NO_x emissions from Unit 1 increased by 943 tons over the highest level of baseline actual annual emissions from that unit in the 60 months immediately preceding the project. A similar evaluation shows that SO₂ emissions increased by 140 tons.

Thus, the physical changes and/or changes in the method of operation at Unit 1 resulted in significant emissions increases of SO₂ and NO_x. Furthermore, because there were no contemporaneous or creditable emission decreases, the physical changes and/or changes in the method of operation at Unit 1 also resulted in significant net emissions increases of SO₂ and NO_x at NGS.

Consequently, you have committed and are committing the following violations.

- a. With respect to SO₂ and NO_x, you violated and are violating 42 U.S.C. § 7475(a) by making a major modification and operating NGS without a permit issued for the plant in accordance with Part C of Title I of the Clean Air Act setting forth emission limitations for the facility which conform to the requirements of Part C of Title I of the Clean Air Act. The major modification involved physical or operational changes made during the 2005 Unit 1 Major Overhaul and which resulted in a significant emission increase and a significant net emission increase for SO₂ and NO_x for at least one 12-month period beginning on or after April 1, 2005.
- b. With respect to SO₂ and NO_x, you violated and are violating 40 C.F.R. § 52.21(a)(2)(iii) by making a major modification and operating NGS without a permit issued for the plant in accordance with 40 C.F.R. § 52.21. The major modification involved physical or operational changes made during the 2005 Unit 1 Major Overhaul and which resulted in a significant emission increase and a significant net emission increase for SO₂ and NO_x for at least one 12-month period beginning on or after April 1, 2005.

- c. With respect to SO₂ and NO_x, you violated and are violating 40 C.F.R. §52.21(j)(3) by operating NGS without applying best available control technology for these pollutants at NGS Unit 1.
- d. Because you failed to obtain the permit as discussed in the previous paragraphs, you are violating 40 C.F.R. 71.1(b) by operating without a Part 71 permit. NGS had a Part 71 permit that expired in July 2013, but that permit is no longer in effect. Moreover, 40 C.F.R. § 71.7(c)(1)(ii) provides that:

Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and § 71.5(a)(1)(iii).

Furthermore, 40 C.F.R. § 71.7(b) provides in pertinent part that:

If a part 71 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 71 permit is not a violation of this part until the permitting authority takes final action on the permit application....

In addition, 40 CFR 71.5(a)(1)(ii) provides in pertinent part that:

Part 71 sources required to meet the requirements under section 112(g) of the Act, or **to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 71 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish.** Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date. Where an existing part 70 or 71 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(emphasis added).

In summary, because you were required to have a permit under 40 C.F.R. §52.21 for the major modification described above, you were required to file a complete application to obtain a Part 71 revision within 12 months of commencing operation after the modification. Moreover, every subsequent renewal application that fails to contain applicable PSD permitting requirements is incomplete. Accordingly, because you have not submitted a complete Part 71 renewal application, your Part 71 permit expired in July 2013, and every day that you have operated NGS since then violates the Act since you are operating NGS without the required Part 71 permit.

- e. You are violating 40 CFR 49.5513(j)(10). By making the major modification described above in paragraph (a), you are required to apply Best Available Control Technology. *See* 40 CFR 52.21(j)(3). Because you are operating without a Best Available Control Technology emission limitation and the control equipment required to meet that standard, you are failing to operate Unit 1 in a manner consistent with good air pollution control practices for minimizing emissions.

C. The Person or Persons Responsible for the Alleged Violations

The persons or persons responsible for the alleged violations are the owners and operators of NGS, identified below:

Plant Manager
Navajo Generating Station
P.O. Box 850
Page, Arizona 86040

Salt River Project
1500 N. Mill Avenue
Tempe, AZ 85281

Salt River Project Agricultural Improvement
and Power District
1521 N. Project Dr.
Tempe, AZ 85281

Salt River Valley Water Users' Association
1500 N. Mill Avenue
Tempe, AZ 85281

Arizona Public Service Company
400 North 5th Street
Phoenix, Arizona 85004

Brenda Burman, Commissioner
U.S. Bureau of Reclamation
Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240-0001

Ryan Zinke, Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

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Nevada Power Company d/b/a NV Energy
6226 West Sahara Avenue
Las Vegas, Nevada 89146

Tucson Electric Power Company
88 E Broadway HQE910
Tucson, Arizona 85701

D. The Location of the Alleged Violations

The location of the alleged violations is:

Navajo Generating Station
5 miles east of Page, Arizona off U.S. Highway 98
Page, Arizona

E. The Date or Dates of Alleged Violations

You committed the violations described above in Section B of this letter every day the plant was operating from the date of this letter going back five years , and these violations will continue each day until you obtain the appropriate permit.

F. The Full Name and Address of the Person Giving the Notice

The person giving this notice is:

Sierra Club
2101 Webster St., Suite 1300
Oakland, California 94612
Phone: (415) 977-5500

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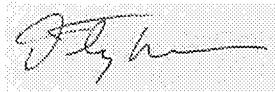
G. Conclusion

If you believe any of the facts described above are in error or have any information indicating that you have not violated the Clean Air Act, we urge you to contact us immediately.

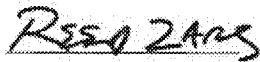
Sincerely,



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(415) 716-9159



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Counsel for Sierra Club

Plant Manager, Navajo Generating Station et al.
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Copies to (all via Certified Mail, Return Receipt Requested):

Andrew Wheeler
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Governor Doug Ducey
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Tempe, AZ 85281
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Herlinda Kennedy
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88 E Broadway HQE901
Tucson, Arizona 85701
Certified Mail # 7018 0040 0000 7884 8838

Appendix 1

Baseline Emissions for 2005 NGS Unit 1 Outage, 5 Year Lookback			
24-month Baseline Period Ending:		SO2 Baseline, tpy	NOx Baseline, tpy
Month	Year		
1	2002	1,150	11,823
2	2002	1,118	11,806
3	2002	1,140	11,786
4	2002	1,146	11,709
5	2002	1,150	11,711
6	2002	1,141	11,705
7	2002	1,140	11,620
8	2002	1,121	11,514
9	2002	1,109	11,398
10	2002	1,122	11,296
11	2002	1,137	11,273
12	2002	1,168	11,236
1	2003	1,175	11,137
2	2003	1,156	10,975
3	2003	1,155	10,990
4	2003	1,163	10,939
5	2003	1,174	10,943
6	2003	1,168	10,929
7	2003	1,167	10,868
8	2003	1,174	10,837
9	2003	1,191	10,802
10	2003	1,198	10,765
11	2003	1,196	10,881
12	2003	1,186	10,952
1	2004	1,183	10,962
2	2004	1,179	11,016
3	2004	1,174	11,068
4	2004	1,183	11,204
5	2004	1,181	11,199
6	2004	1,189	11,212
7	2004	1,190	11,217
8	2004	1,197	11,267
9	2004	1,220	11,425
10	2004	1,222	11,518
11	2004	1,230	11,487
12	2004	1,222	11,439
1	2005	1,242	11,602
Highest 24-month Baseline Emissions		1,242	11,823

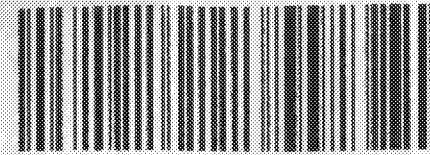
Actual Emissions Data for NGS from EPA's Air Markets Program Data, available at <https://ampd.epa.gov/ampd/>

Post-2005 Outage Actual Annual Emissions of NGS Unit 1 and Whether Significant Increase from Highest Baseline Emissions Occurred					
12-month Post Outage Period Ending:		SO2, 12-month sum, tpy	Significant SO2 Increases, tpy	NOx, 12-month sum, tpy	Significant NOx Increases, tpy
Month	Year				
3	2006	1,381	140	12,766	943
4	2006	1,347	106	12,954	1,131
5	2006	1,312	70	12,933	1,110
6	2006	1,271		12,893	1,070
7	2006	1,268		12,792	969
8	2006	1,245		12,617	794
9	2006	1,228		12,559	736
10	2006	1,174		12,062	239
11	2006	1,219		12,293	470
12	2006	1,216		12,263	439
1	2007	1,231		12,432	609
2	2007	1,299	57	12,472	649
3	2007	1,269		12,511	688
4	2007	1,322	81	12,305	482
5	2007	1,359	117	12,385	562
6	2007	1,389	147	12,583	759
7	2007	1,406	164	12,592	769
8	2007	1,468	227	12,807	984
9	2007	1,556	314	12,979	1,156
10	2007	1,603	361	13,323	1,500
11	2007	1,600	359	13,357	1,534
12	2007	1,606	364	13,231	1,408
1	2008	1,612	370	13,068	1,245
2	2008	1,468	227	12,132	309
3	2008	1,509	267	12,116	293
4	2008	1,519	277	12,352	529
5	2008	1,520	279	12,321	498
6	2008	1,514	272	12,116	293
7	2008	1,510	268	12,229	406
8	2008	1,480	238	12,185	362
9	2008	1,446	204	12,225	402
10	2008	1,454	212	12,419	596
11	2008	1,408	166	12,168	345
12	2008	1,412	171	12,051	227
1	2009	1,441	200	12,120	297
2	2009	1,535	293	13,056	1,233
3	2009	1,521	279	13,001	1,178
4	2009	1,537	295	12,949	1,126
5	2009	1,582	341	13,028	1,205
6	2009	1,614	372	13,049	1,225
7	2009	1,650	409	13,223	1,400
8	2009	1,684	443	13,306	1,483
9	2009	1,710	469	13,286	1,463
10	2009	1,748	506	13,198	1,375
11	2009	1,821	580	13,368	1,545
12	2009	1,857	615	13,531	1,708
1	2010	1,888	647	13,465	1,642
2	2010	1,912	671	13,244	1,420
3	2010	1,908	666	13,259	1,436

Actual Emissions Data for NGS from EPA's Air Markets Program Data, available at <https://ampd.epa.gov/ampd/>

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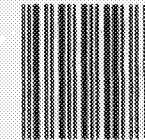
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